IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1565 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL INSURANCE CO. LTD. - Appellant(s)
Versus
KALPANABEN, WD/O KHUSHVADAN
HASUMUKHBHAI SHAH & ORS. - Respondent(s)

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
Shri D.F. Amin for Respondent(s) : 1 - 4.
None for Respondent Nos.5, 6 and 8 though the names of Shri K. J. Vyas, Shri H.R. Kapadia and Shri Mahesh R. Shah are shown.
None for Respondent No.9 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

Shri Rajni H. Mehta, learned Counsel for the appellant,

submits that he be allowed to delete the name of respondent No.7. The prayer is allowed. Office to make necessary corrections in the cause title within one week.

2. Shri Rajni H. Mehta, learned Counsel for the appellant, relying upon a judgment of the Supreme Court in the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], submitted that if the deceased was a passenger in the goods vehicle, then, the Insurance Company, could not be held liable.

3. Shri D.F. Amin, learned Counsel for the claimants, however, submitted that as the deceased was travelling with the goods, not as a passenger, but, as a caretaker of the goods, the Insurance Company must be held liable.

4. From the judgement of the Supreme Court in the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.*** (*supra*), it would clearly appear that any person, who is travelling in a goods vehicle, if not specifically covered under the terms of the policy, then, the Insurance Company, in case of the accident, would not be answerable to the claim made by such person or his dependents.

5. In view of the law propounded by the Supreme Court, I have no hesitation in holding that the Insurance Company would not be liable.

The appeal is allowed. The Insurance Company is exonerated of its liability. If the Insurance Company has deposited the amount with the subordinate Court and the amount is still lying with it, then, the Insurance Company would be entitled to refund of the same on an application to the subordinate Court. In case of such refund, the claimants would be entitled to recover the amount from the owner and driver of the truck, who have not challenged their liability against the claimants. In case the amount has already been paid to or withdrawn by the claimants, then, the Insurance Company would be entitled to recover the said amount with 6% interest per annum from the date of deposit till the date of recovery/realisation, from the driver and owner of the truck.

6. In the result, the appeal is allowed. No costs.

[R.S.Garg, J.]

*kamlesh**